



Proving Veteran Possesses 51 Percent Direct Ownership

Issue:

This brief explains the verification requirement that Veterans must own at least 51 percent of the applicant directly.

(For purposes of this brief, Veteran applies equally to Service-Disabled Veterans; applicant refers to the business entity applying for verification; and participant refers to a business entity that has already been verified.)

The Regulation:

38 CFR § 74.4(a) provides that “[o]wnership by one or more veterans or service-disabled veterans must be direct ownership. An applicant or participant owned primarily by another business entity or by a trust (including employee stock ownership plans [ESOP]) that is in turn owned by one or more veterans or service-disabled veterans does not meet this requirement. However, ownership by a trust, such as a living trust, may be treated as the functional equivalent of ownership by a veteran or service-disabled veteran where the trust is revocable, and the veteran or service-disabled veteran is the grantor, a trustee, and the sole current beneficiary of the trust...”

What This Means:

The applicant must be at least 51 percent directly-owned by one or more Veterans. If the applicant is owned primarily by another business or entity that in turn holds ownership interest in the applicant, this does not meet the requirement of direct ownership. This requirement applies even if the Veteran owns 100 percent of the entity that in turn owns 51 percent or greater interest in the applicant.

Example

The business applying for verification (Company A) is owned 100 percent by Company B. The Veteran owns 100 percent of Company B. This arrangement would be a violation of the direct ownership requirement of the regulation, as the Veteran does not directly own at least 51 percent of Company A.

Ownership by a trust is an exception to this general rule. However, the trust must meet certain conditions. The trust must be revocable and the Veteran must be the grantor, a trustee, and the sole current beneficiary of the trust. Thus, in the case of an irrevocable trust, the Veteran’s ownership interest in the applicant will not be considered directly held for verification purposes. Finally, while the Veteran must be the sole current beneficiary of the trust income, the trust can provide for its assets to go to another person, entity, or beneficiary upon death of the Veteran.

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**VA Office of Small and Disadvantaged
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